

Grenfell charge delays understandable, but where have all the corporate manslaughter prosecutions gone?

Victoria Roper, Senior Lecturer, Northumbria University

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In March it was announced that criminal charges relating to the Grenfell Tower fire are unlikely to be brought before 2021, five years after the deadly blaze.¹ The police have confirmed they are considering a range of offences, and have reasonable ground for suspecting the local authority (the Royal Borough of Kensington and Chelsea), and the company that managed Grenfell Tower, of corporate manslaughter.² Although the perceived delay has been met with dismay, a thorough investigation into such a large scale and complex tragedy involving 72 deaths was always going to take years, and does not necessarily mean charges will not be brought.

The Corporate Manslaughter Offence

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) created the statutory offence of corporate manslaughter, an offence designed specifically to apply to companies and other types of organisations, rather than to individuals. It removed the need to attempt to apply the common law offence of gross negligence manslaughter to companies. This process was fraught with difficulty, particularly in relation to larger companies, and resulted in only a handful of convictions.³ Application of the common law offence essentially required the court to find that a director of the company was themselves guilty of the offence before then 'attributing' their guilt onto the company.⁴ The focus was very much on individual fault. A series of large-scale disasters, like the sinking of the Herald of the Free Enterprise⁵, resulted in failed, or non-existent, prosecutions. This, coupled with concern about then a high number of workplace deaths⁶, led to widespread support for reform.⁷

The CMCHA offence is aimed at only the worst cases of corporate negligence, and the Regulatory Impact Assessment estimated that the offence would lead to an additional 10-13 corporate manslaughter prosecutions per year.⁸ Before the CMCHA there were often years where no companies were prosecuted, so although numerically low, 10-13 prosecutions represented a significant anticipated increase in relative terms.

CMCHA Prosecutions to Date

There have been 26 convictions to date. This is indeed significantly more than the number of companies prosecuted under the old common law offence. Only companies, as opposed to the other types of organisation like local authorities, have been convicted. Given the new offence has now been around for 11 years, we could have expected the number of convictions to be significantly higher, in the region of 110- 143, based on the relatively conservative Regulatory Impact Assessment estimate. Accordingly, whilst the CMCHA has proven to be a marginally better tool for prosecuting companies, it has fallen short of the relatively modest ambitions that were set for it.

Although convictions for the statutory offence were possible from 2008⁹, it was not until 2011 that the first case to be prosecuted resulted in conviction. Cotswold Geotechnical Holdings Ltd (Cotswold) was a very small company with a single director.¹⁰ The company was convicted of corporate manslaughter in relation to the death of an employee who was killed when a pit collapsed on him whilst he was taking soil samples. The main sanction for corporate manslaughter is a potentially unlimited fine.¹¹ Cotswold was fined £385,000.

In 2012 and 2013 there were two convictions, followed by four in 2014 (see Table 1 below). The only year in which the number of convictions has nearly equalled the level predicted by the Regulatory Impact was 2015, when there was a sudden spike resulting in nine companies either pleading guilty or being found guilty at trial. It seemed logical to expect that after 2015 that there would continue to be an increase in the number of convictions annually, or at least that the number would plateau at around ten. In fact, the number fell back down to three in 2016. In 2017, the last year a conviction was

obtained, five companies were convicted. The whole of 2018 and the start of 2019 are notable for their absence of prosecutions of corporate manslaughter. Most of the cases to date have involved single fatalities (predominantly of an employee), and the majority of the companies convicted have been small entities without complex organisational structures. The highest fine in a case is £1.2 million¹², the lowest a paltry £8,000¹³.

Table 1 – Corporate Manslaughter Convictions under the CMCHA

Year	Number of convictions
2008	0
2009	0
2010	0
2011	1
2012	2
2013	2
2014	4
2015	9
2016	3
2017	5
2018	0
2019 (as at [April])	0
Total	26

The reasons why there have not been more prosecutions

The Health and Safety Executive (HSE) is the body that normally investigates injuries at work and takes responsibility for charging organisations with health and safety offences. A corporate manslaughter charge on the other hand must be brought by the Crown Prosecution Service (CPS), and will consume valuable time and resources. Prosecution costs can be significant in corporate manslaughter cases, for example they were £200,000 in one case.¹⁴ Whilst most CMCHA prosecutions have resulted in conviction, the defendant has been acquitted in three cases¹⁵ and the charge dismissed by the judge in another¹⁶, meaning conviction is far from certain. If the HSE is prepared to prosecute for health and safety breaches surrounding a death, there may be little incentive for the CPS to take on the burden and risk of bringing a corporate manslaughter prosecution.

Corporate manslaughter cases are also harder to prove than health and safety offences and this is also likely to deter the CPS from tackling complex cases. For example, the CPS have to find evidence of senior management fault linking them to the gross breach of care which led to the death.¹⁷ When the draft corporate manslaughter bill was scrutinised, this was described as a “fundamental weakness” which would “do little to address the problems that have plagued the...common law offence”.¹⁸ The requirement for senior management involvement could be an insurmountable hurdle in the Grenfell case should a prosecution be brought.

Grenfell Tower

If corporate manslaughter convictions are pursued in the Grenfell Tower case, it will represent the CMCHA’s greatest test to date. The Grenfell Tower fire is the kind of mass fatality incident the CHCHA was designed to be more effective at prosecuting. When a fire rapidly spread through the tower in June 2017, seventy two people lost their lives. Grenfell Tower has always been owned by the Royal Borough of Kensington and Chelsea (RBKC).¹⁹ RBKC was the landlord for all social housing tenants²⁰, but the management of the local authority’s social housing was devolved to a separate legal entity, a company called Kensington and Chelsea Tenant Management Organisation.²¹ Grenfell Tower had

been renovated a number of times over the years. It was the most recent renovation works which involved the fitting of the external cladding that came under scrutiny following the fire.²²

A company has been convicted of corporate manslaughter in relation to two deaths on two occasions but all the other convictions have been in relation to one death. Grenfell is a particularly complex case involving 72 deaths, so the investigation was always going to take a significant amount of time. Apparently 460 companies were involved in various work at Grenfell Tower over the years²³, and the investigation involves 187 police officers and civilian staff, over 31 million documents, 2,500 physical exhibits and 2,332 witness statements.²⁴ On average, it takes three years and one month from the date of a death for a corporate manslaughter case to be investigated, charges brought and the case decided at court. In light of this, it is no surprise that the Grenfell investigation may take five years. It would undoubtedly take even longer were it not for the fact significant additional personnel have been allocated to the investigation.

Conclusion

Grenfell Tower could represent a turning point for the CMCHA. If corporate manslaughter prosecutions succeed in such a complex case, the Crown Prosecution Service (CPS) may have a renewed confidence in prosecuting corporate manslaughter. If prosecutions fail though, or are perhaps never issued in the first place, this will likely reaffirm a view that CMCHA prosecutions are fraught with difficulty, and in the vast majority of cases it is preferable for the HSE to alternatively bring health and safety charges. Grenfell may determine whether the lack of CMCHA prosecutions over the last 18 months remains an anomaly, or the new normal.

Word count (excluding footnotes) – 1,420

¹ See for example 'Grenfell Tower: Prosecution file 'unlikely' before 2021', <https://www.bbc.co.uk/news/uk-england-london-47478091> [Accessed 23 March 2019].

² See 'Grenfell council may have committed corporate manslaughter', <https://www.theguardian.com/uk-news/2017/jul/27/met-says-grenfell-council-may-have-committed-corporate-manslaughter> [Accessed 23 March 2019].

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- ³ The House of Commons Home Affairs and Work and Pensions Committees, 'Draft Corporate Manslaughter Bill, First Joint Report of Session 2005-2006, Volume 1: Report', HC 540-I (2005), para 11.
- ⁴ Home Office, 'Reforming the Law on Involuntary Manslaughter: The Government's Proposals', (2000) at para. 3.1.3.
- ⁵ The Herald of the Free Enterprise was a ferry that capsized in 1987 with a death toll of 193. A gross negligence manslaughter prosecution of the company failed.
- ⁶ Home Office, 'Corporate Manslaughter: The Government's Draft Bill for Reform' (2005) para 6.
- ⁷ *Ibid*, para. 1.
- ⁸ Home Office, 'Corporate Manslaughter and Corporate Homicide: A Regulatory Impact Assessment on the Government's Bill' (2006), p. 5-6, available at <http://webarchive.nationalarchives.gov.uk/+http://homeoffice.gov.uk/documents/ria-corporate-manslaughter.pdf?view=Binary> [accessed 23 March 2019].
- ⁹ The act received Royal Assent on 26 July 2007 and came into force on 6 April 2008 save for s. 2(1)(d) and s.10.
- ¹⁰ *R v Cotswold Geotechnical (Holdings) Ltd* [2011] All ER (D) May 100.
- ¹¹ CMCHA, s. 1(6) and Sentencing Council, 'Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline' (2016).
- ¹² *Health and Safety Executive v Martinisation (London) Ltd* unreported 19 May 2017 (Central Crim Ct).
- ¹³ *R. v Mobile Sweepers (Reading) Ltd* unreported February 26, 2014 (Crown Ct (Winchester)).
- ¹⁴ *Health and Safety Executive v Baldwins Crane Hire Ltd* (unreported), Preston Crown Court, 22 December 2015. Note this sum included all the CPS costs and half the HSE's costs.
- ¹⁵ The acquittals were of *R v PS & JE Ward Ltd* (unreported), Norwich Crown Court, 6 June 6 2014; *R V MNS Mining Limited* (2014) (unreported) Swansea Crown Court, 19 June 2014 and *R v George Edward Perrot and Clinton Devon Farms Partnership* (2019) (unreported) Exeter Crown Court, 11 February 2019.
- ¹⁶ *R v Dr Errol Cornish and Maidstone and Tunbridge Wells NHS Trust* [2015] EWHC 2967 (QB).
- ¹⁷ CMCHA, s. 1(3).
- ¹⁸ The House of Commons Home Affairs and Work and Pensions Committees, 'Draft Corporate Manslaughter Bill, First Joint Report of Session 2005-2006, Volume 1: Report', HC 540-I (2005), para. 140.
- ¹⁹ Grenfell Tower Enquiry, 'Royal Borough of Kensington and Chelsea Opening Statement' 18 June 2018 p. 2 available at <https://assets.grenfelltowerinquiry.org.uk/documents/Royal%20Borough%20of%20Kensington%20%26%20Chelsea%20Opening%20Statement.pdf> [accessed 5 April 2019].
- ²⁰ Grenfell Tower Enquiry, 'Transcript of Opening Statements 6 June 2018' p. 101 available at <https://www.grenfelltowerinquiry.org.uk/hearings/opening-statements-1> [accessed 5 April 2019].
- ²¹ Grenfell Tower Enquiry, 'Transcript of Opening Statements 4 June 2018' p. 28 available at <https://www.grenfelltowerinquiry.org.uk/hearings/opening-statements> [accessed 5 April 2019].
- ²² *Ibid*, p. 44.
- ²³ Ministry of Housing, Communities and Local Government, 'Letter to residents following the Grenfell Tower fire' 6 June 2018, p. 1 available at <https://www.gov.uk/government/publications/letters-to-residents-following-the-grenfell-tower-fire-6-june-2018> [accessed 5 April 2019].
- ²⁴ Grenfell Tower Enquiry, 'Transcript of Procedural Hearing 11 December 2018' p. 34 available at <https://www.grenfelltowerinquiry.org.uk/hearings/procedural-hearing-1> [accessed 5 April 2019].